

Appeal from a decision of the Acting Director, Minerals Management Service, granting in part and denying in part appeals of orders assessing additional royalties on natural gas production from certain Federal offshore oil and gas leases. MMS-86-0199-OCS and MMS-87-0008-OCS.

Affirmed.

1. Oil and Gas Leases: Royalties: Generally--Outer Continental Shelf Lands Act: Refunds

The offsetting of overpayments of royalty on natural gas production from an offshore oil and gas lease against underpayments of royalty may only take place after an official audit and within the royalty account of a single lease. Offsetting between leases is not permitted.

APPEARANCES: M. Hampton Carver, Esq., Melanie Miller Lewis, Esq., Linda A. Hoffman, Esq., Susan H. Meyers, Esq., and Arthur P. Mitchell, Esq., New Orleans, Louisiana, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Chevron U.S.A. Inc. (Chevron) has appealed from a decision, dated April 1, 1987, issued by the Acting Director, Minerals Management Service (MMS), which granted in part and denied in part appeals of orders assessing additional royalties for natural gas production from certain Federal off-shore oil and gas leases. MMS-86-0199-OCS and MMS-87-0008-OCS.

In his decision, the Acting Director set forth the background of this case as follows:

These appeals involve the overpayment and underpayment of Federal oil and gas royalties by Chevron U.S.A. Inc. (Chevron) during the period July 1980 through September 1980. Chevron states that it underpaid royalties on natural gas production from

Federal Lease Nos. OCS 0165, 0166, 0369, 0370, 0386, 0387, 0390, 0391, and 0392 by \$170,738.62 and overpaid royalties due on natural gas production from Federal Lease Nos. OCS 0595 and 0685 by \$247,627.07. On March 2, 1981, Chevron requested a refund in the amount of \$76,888.45 (the difference between its overpayments and underpayments).

On March 30, 1981, the U.S. Geological Survey (USGS) acknowledged receipt of that request and advised Chevron that it was being processed.

In May 1983 the Minerals Management Service (MMS) advised Chevron by telephone that the attachments supporting Chevron's request for a refund were missing and asked Chevron to submit copies of those attachments. Chevron transmitted copies of those attachments (Forms 9-614A and 9-153) to MMS on May 25, 1983.

On February 19, 1986, MMS issued a letter authorizing Chevron to recoup the sum of \$76,888.45. On February 24, 1986, MMS issued a preliminary determination that Chevron owed the United States the sum of \$170,738.62 for the underpayment of royalties during the period July 1980 through September 1980.

On March 27, 1986, Chevron filed a formal protest of that preliminary determination. Chevron argued that its underpayments were offset by the overpayments it made during the same period and that MMS should either find that no further payment is due or authorize a refund of \$247,627.07 for Lease Nos. OCS 0595 and OCS 0685 instead of the \$76,888.45 refund Chevron originally sought. Chevron's protest was treated as a formal appeal and was docketed as MMS-86-0199-OCS.

On August 12, 1986, MMS issued a final order demanding payment from Chevron of \$170,738.62 in royalties. Chevron filed a timely appeal of that order (docketed as MMS-87-0008-OCS).

(Decision at 1-2). Chevron does not challenge this statement of the facts.

The issue in this appeal, as stated by Chevron in its statement of reasons, is whether Chevron is entitled to offset the amount of its underpayments of royalties against its overpayment of royalties, when the underpayments and overpayments occurred on different leases.

Chevron contends that section 10 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1339 (1982), does not proscribe the offsetting of underpayments against the overpayments of oil and gas royalties. Chevron states that the propriety of such an offsetting has been recognized by this Board in Mobil Oil Corp., 65 IBLA 295 (1982), and Shell Oil Co., 52 IBLA 74 (1981).

[1] Section 10(a) of OCSLA, 43 U.S.C. § 1339(a) (1982), requires that any request for a refund of overpayments be filed within 2 years of the payment. ^{1/} Where the Department undertakes to audit a producer more than 2 years after the excess payments at issue have been made, fundamental principles of fairness require the Department to recognize both the producer's underpayments and overpayments of royalty and to offset the underpayment by the amount of the overpayment. Shell Oil Co., *supra* at 78. Contrary to Chevron's assertions, the Department has limited this exception to the off-setting of overpayments on a given lease against underpayments on that lease. Thus, this Board stated in Union Oil Company of California, 110 IBLA 62, 64 (1989):

[O]ffsetting of overpayments against underpayments may only take place after audit and within the royalty account of a single lease. Offsetting between leases is not permitted, because Federal oil and gas leases are individually assessed royalty and prudential considerations prevent crediting between leases. Mesa Petroleum Co., 108 IBLA 1149 (1989); Sun Exploration & Production Co., [106 IBLA 300 (1989)].

In Sun Exploration & Production Co., *supra* at 302-303, we discussed the effects of the Shell Oil Co. and Mobil Oil Corp. cases, cited by Chevron, as follows:

Our holding in Shell Oil Co. was based on the notion that it would be impermissible, in the course of an audit, to disregard the purpose for which the audit was being conducted: discovery of the amount of royalty actually owed on the lease. As the concurring opinion in Mobil Oil Corp. later pointed out, however, the fact that royalty audits are conducted by individual lease necessarily limits the application of our holding in Shell Oil Co. to individual leases within the audit.

The logic and necessity for this position becomes apparent when it is recognized that the royalty payor may be an operator who is the agent for a group of lessees. Ultimate liability for any underpayment of royalty, and credit for overpayment, remains with the lessees. * * *

^{1/} In a recent decision, Chevron U.S.A., Inc. v. United States, No. 350-87L *et al.*, (Cl. Ct. July 24, 1989), the United States Claims Court reversed this Board's determination in Shell Offshore, Inc., 96 IBLA 149, 94 I.D. 69 (1987), that sec. 10(a) limits the authority of the Department to refund overpayments to those requests filed with MMS within 2 years of the date of the original payment. The court found sec. 10(a) to be a statute of limitations and that the time period begins to run from the time the payment is determined to be excessive.

Further, it is more likely than not that lessees of a lease for which royalties are overpaid will be different in identity or percentage of lease ownership from the lessees of an underpaid lease. If the right of setoff were to be allowed in the uncritical fashion advocated by Sun, the rights of the lessees entitled to credit for overpayments could be infringed. Such lessees might then claim credit to setoff their overpayments against amounts owing for other lease accounts. Since Federal royalty revenue is not uniformly distributed allowance of such offsets would cause inequities for the recipients of such revenue.

We therefore affirm our decisions in Shell Oil Co. and Mobil Oil Co. We find that because leases are assessed royalty on an individual basis, any allowable offset must be discovered within the limits of an individual lease. Shell Oil Co., *supra*; Mobil Oil Corp., *supra*. [Footnote omitted.]

Other arguments raised by Chevron in this case have been fully addressed by this Board in our decisions in Union Oil Company of California, *supra*; Mesa Petroleum Co., *supra*; and Sun Exploration & Production Co., *supra*. Nothing presented by Chevron convinces us that this Board's previous rulings are in error.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge